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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,700	06/07/2006	Stefan Ganzoni	0514-1216	1812

466 7590 05/12/2010  
YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
Alexandria, VA 22314

EXAMINER
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TOMPKINS, ALISSA JILL

ART UNIT	PAPER NUMBER
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3765

NOTIFICATION DATE	DELIVERY MODE
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05/12/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,700	<b>Applicant(s)</b> GANZONI ET AL.	
	<b>Examiner</b> ALISSA J. TOMPKINS	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment filed on 1/28/2010 has been received. Claims 1-13 are currently pending.

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

It is noted that the Examiner noted in the last Office Action that drawings were deemed necessary in this application so that the invention can be clearly understood. The drawings filed with the PCT/priority application do not clearly show the claimed invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3765

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is noted that the applicant does not use proper knitting terminology of courses and wales in new claim 13. Instead the applicant uses "rows" and "columns". This is problematic because if you look at a knit fabric you can readily determine the wales and courses but "rows" and "columns" can differ depending on the orientation of the fabric. The applicant should clarify the claim language so that is clear what is considered a wale and a course.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zens (U.S. 4,172,456). Zens discloses a support article or under-article that is capable of being used alone or under a support article while in direct contact with the skin of the wearer. The article is essentially knit and in as best understood by the examiner has at least two different mesh structures. A first

Art Unit: 3765

structure for a first zone 4 of the article extends from the end intended for the toes to a level of the ankle bones of a wearer. This zone consists of a fabric constructed with a conventional jersey hosiery stitch made up of base yarn 6, which is conventionally made of nylon, cotton, etc. This zone is provided with a one-way stretch in a circumferential direction so as to be capable of exerting a compressive force around the wearer's leg. The one-way circumferential stretch is provided by elastomeric yarn 11 which is laid-in sometimes referred to as floated, in the jersey stitch (Column 2, 30-45). The outer surface of this zone is therefore considered to be smooth. A second structure for a second zone 3 extends upward from the ankle area in a direction opposite the wearer's toes. This zone is knitted as best understood using a woven mesh pattern. It is noted that the applicant claims a dtex range for the second zone but offers no criticality for the range in the specification. The support article of Zens provides a compressive force around the wearer's leg varying from a maximum in the first zone 4 working its way to a minimum near open end 16. Therefore the second zone affords a lighter compression for the second structure. Therefore the structure of Zens is considered to meet the dtex range limitations as claimed in claim 1.

As for claims 2 and 3, Zens mentions using nylon in the first zone 4. Nylon is a synthetic textile material that is can have a smooth surface. Nylon is also a polyamide. The applicant claims a "preferably flat synthetic filament, untextured and preferably in combination with elastothane." The term

Art Unit: 3765

"preferably" does not positively recite these features. These features therefore do not have to be shown in the prior art.

As for claims 4 and 5, the article of Zens is conventionally made up of nylon, cotton, etc. Figure 3 represents the knit structure for the second structure. The base yarn 14 which may be composed of cotton does not account for more than 50% of the second zone and therefore would not comprise more than 50% by weight.

As for claim 6, the claim is rejected as best understood by the examiner. It is noted that the foot area of the article is made of a synthetic material

As for claims 7 and 8, both claims contain functional limitations. These claims do not require any structural limitations. The prior art of Zens meets the previously claimed structural limitations and is therefore capable of performing in the manner claimed.

As for claims 9-12, Zens discloses an article of apparel that may be worn as a stocking or an under stocking, tights or under tights, legging or under legging, or a sock or under sock.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

Art Unit: 3765

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zens in view of Bradberry (U.S. 5,412,957). Zens discloses the invention substantially as disclosed in claim 1 above. However, Zens does not go into detail about the pattern details for his floating mesh material. Bradberry discloses a knit therapeutic stocking. Figure 5 of Bradberry shows wales (w-1, w-2) which could comprise one column and course (c-1, c-2, c-3) could comprise one row. It is noted that the applicant's specification is not clear as to how many courses make up a "row of meshes" or how many wales make up a "column." Therefore Bradberry meets the limitation wherein a first of the rows comprising meshes whose loops are completely formed on all columns of the pattern, a second of the rows comprising meshes whose loops are completely formed on all columns of the pattern, a second of the rows comprising meshes whose loops are completely formed on even columns and whose loops are not formed at all on odd columns, a third of the rows comprising meshes whose loops are completely formed on all columns of the pattern, and a fourth of the rows comprising meshes whose loops are not formed at all on even columns. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the floating mesh pattern of Bradberry to modify the support article of Zens in order to provide compressive force to a wearers leg/foot.

### ***Response to Arguments***

Applicant's arguments filed 1/28/2010 have been fully considered but they are not persuasive.

Applicant submits that Zens does not disclose or suggest the claimed combination of special stitches having two different compression strengths. However, it is noted that the Examiner meets the limitations presented by the applicant. The applicant has not amended the original claims to further describe these "special stitches." As stated above, the drawings also do not help the Examiner to further understand the invention. In as much as the applicant has described, the prior art of Zens meets the claim limitations as presented.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be



Art Unit: 3765

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA J. TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/  
Examiner, Art Unit 3765

Art Unit: 3765

/GARY L. WELCH/

Supervisory Patent Examiner, Art Unit 3765